

REMARKS

Claims 1, 3 to 5, 7 to 17 and 20 to 37 are the pending, of which Claims 1, 4, 7, 12, 17, 24, 25, 28 and 31 are independent. Claims 1, 4, 7, 12, 17, 24, 25, 28, 31, 36 and 37 are being amended. Reconsideration and further examination are respectfully requested.

Claims 4, 17, 28 and 36 are objected to as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action contends that the term “tangible” modifying the computer-readable medium element recited in Claims 17 and 36 is not described in the specification, and that there is insufficient basis for this limitation in the claims. There is no *in haec verba* requirement that the exact wording be used in the specification and the claims. See MPEP § 2163. Furthermore and in accordance with Webster’s Dictionary, Unabridged Second Edition, to “embody” is to “give definite, tangible … form to; to make concrete”. As described in the originally-filed application, e.g., paragraph 110 of the originally-filed application, in accordance with one or more embodiments, code is embodied, i.e., given definite, tangible form, in a computer program product which comprises a computer-readable medium configured to store the code. For the sole purpose of advancing prosecution and without conceding in any way the correctness of the rejection, Claims 17 and 36 are amended in a manner discussed below. It is believed that the amendments obviate the claim objections.

Claim 4 is amended, as suggested in the Office Action, to change “defining” to read “define”. In addition, Claims 4 and 28 are amended to read “a network”.

Claims 17 and 36 are also rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. The Office Action contends that since the specification as originally filed describes a carrier wave as one example of a medium, Claims 17 and 36 should be amended to recite a computer storage readable medium, and the reference to carrier waves on page 28 of the application should be deleted to comply with 35 U.S.C. § 101. Without conceding in any way the correctness of the objection, Claim 17 is amended to recite a *computer program product embodying computer code and comprising a computer-readable storage medium configured to store computer code thereon*. Claim 36 is amended to correspond with the amendments made to Claim 17. In view of the recent position of the PTO and case law with respect to carrier waves, the amendments are being made to avoid this issue at this time.

Furthermore and while the Office Action suggests that the specification should be amended to remove the mention of carrier wave at page 28, paragraph 110 of the originally-filed application (or paragraph 134 of the published application), it is respectfully submitted that the PTO's own position and recent case law instruct otherwise. In particular, reference is respectfully made to MPEP § 2106C.2.(2)a), at page 2100-12 of Revision 6. In addition, recent opinions rendered by the USPTO Board of Patent Appeals and Interferences, which cite this section of the MPEP, state that in a case that a specification recites both statutory and non-statutory subject matter it is sufficient to amend the claims to recite the statutory subject matter. (See *In re Brown, et al.* and *In re Shen, et al.*)

Reconsideration and withdrawal of the objection to Claims 4, 17, 28 and 36, and the § 101 rejection of Claims 17 and 36 are respectfully requested.

Claims 1, 4, 5, 20 to 25, 28 and 37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1, 3, 4, 27, 30 and 31 of U.S. Application Serial No. 10/459,341 (Volk '341). In response, Applicant submits herewith a terminal disclaimer in accordance with 37 C.F.R. § 1.321(c).

Turning to the rejections based on art, Claims 1, 3 to 5, 7 to 17 and 20 to 37 are rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 7,174,126 (McElhatten). Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 1 recites a system that comprises one or more servers configured to generate an interface at a site on a network for display on a user computer. The interface making a plurality of media files provided by a plurality of media file providers available to the user computer. The one or more servers are further configured to define a set of metadata attributes relating to the media files, each of the metadata attributes of the set having a respective predetermined location in the interface regardless of the media file or media file provider, compile a plurality of media, associate metadata attributes from the set of metadata attributes with each of the media files, and map each of the associated metadata attributes to the respective predetermined same location in the interface, so that in the interface for the user each of the associated metadata attributes appears at its respective predetermined location in the interface for all of the media files and media file providers. The interface comprises a channel description portion, a show description portion and an episode description portion together in a display element of the interface. The channel description portion is to display a plurality of channel selections corresponding to the

plurality of media files provided by the plurality of media file providers for selection by said user. The show description portion is to display one or more show selections, and in response to user selection of one or more channel selections said show description portion displays only those show selections corresponding to the channel selection. The episode description portion is to display one or more episode selections, and in response to a chosen one of the one or more show selections said episode description portion displays only those episode selections corresponding to the show selection. The interface further comprises a viewer to view media file content at the user computer, the media file content corresponding to the channel, show and episode selections made by the user using the interface. McElhatten fails to teach, suggest or disclose the claimed system.

McElhatten is concerned with a cable broadcast communication system for transmission of broadcast programming broadcast by broadcast programming networks, i.e., programming broadcast by networks such as the CNN, NBC, and HBO, received at a cable headend to a set-top box via a cable communications network, and with providing an interactive programming guide to the network broadcast programming. McElhatten is not concerned with generating an interface at a site on a network for display on a user computer. While McElhatten mentions a “home site,” it does not correspond in any way to the claimed network site at which the claimed interface is generated. The “home site” reference in McElhatten is to a feature of McElhatten’s interactive programming guide that groups broadcast programming channels broadcast by the same broadcast programming network in a display, so that the user can tune the television to one of the broadcast programming channels. Even if one were to assume that a broadcast programming channel corresponds to a media file and that a broadcast programming network corresponds to a media file provider (neither assumption is in any way conceded), McElhatten’s “home” site would limit availability to a single media file provider, such that only that media file provider’s media files are available via the interface, which is in stark contrast to the claimed user interface that makes a plurality of media files provided by a plurality of media file providers available to a user computer, and/or the claimed network site that generates such an interface. While McElhatten’s Figure 17 shows a web interface to a program guide server, the web interface is limited in its use to reserving a program for later viewing at the user’s television. See McElhatten, col. 19, lines 7 to 13. Furthermore, in order to select a program for later viewing,

the user must scroll through a grid that shows multiple channels, programs and times to select the program that the user wishes to reserve for later viewing at the user's television.

McElhatten fails to teach, suggest or disclose an interface generated at a site on a network for display on a user computer, the interface making a plurality of media files provided by a plurality of media file providers available to the user computer via the network site using the interface. Furthermore, McElhatten fails to teach, suggest or disclose such an interface that makes a plurality of media files provided by a plurality of media file providers available to the user computer via the network site using the interface that comprises channel, show and episode description portions, the show description portion displaying only those shows corresponding to a selected channel and the episode description portion displaying only those episodes corresponding to the selected show. McElhatten further fails to teach, suggest or disclose such an interface that comprises a viewer to view media file content at the user computer, the media content corresponding to the channel, show and episode selection made by the user using the interface.

In view of the foregoing, since the applied art is missing multiple elements of Claim 1, none of the references can form the basis of a proper § 102 rejection, and further cannot form the basis of a proper § 102(e) rejection. Claim 1 (and the claims that depend therefrom) should be patentable over the applied art. In addition, Claims 4, 7, 12, 17, 24, 25, 28, 31 and 37 (and the claims that dependent therefrom) should be patentable over the applied art for at least the same reasons.

In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicants' attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted

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